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May 25, 2022

VIA ECF

Honorable Lorna G. Schofield
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Marie Flaherty v. Lindsey S. Dixon, No. 22 Civ. 2642 (LGS)

Dear Judge Schofield:

This firm represents Defendant Lindsey S. Dixon in the above-referenced matter. Defendant writes in connection with the Court's Order dated May 24, 2022 (Docket Entry No. 16) and Plaintiff's two letter motions dated May 24, 2022 (Docket Entry Nos. 17-18) concerning Plaintiff's request for leave to file a Second Amended Complaint and adjournment of the initial conference currently scheduled for June 1, 2022. For the reasons set forth below, Defendant respectfully requests that the Court adjourn the June 1, 2022 conference until a date and time after the parties have fully briefed Defendant's anticipated Rule 12(b)(6) motion to dismiss the complaint, as well as a parallel adjournment of the joint letter set forth in the Court's Initial Pretrial Conference Order. Defendant has not yet received a response from Plaintiff concerning this request.

At the outset, Defendant apologizes that this is the third filing the Court has received concerning the same above-referenced scheduling issues. Defendant will endeavor to coordinate with Plaintiff to reduce the frequency of multiple filings.

Additionally, to the extent that Plaintiff seeks additional time to file the proposed Second Amended Complaint for the reasons set forth in her May 24, 2022 letter (D.E. No. 17), Defendant consents to Plaintiff's request.

Defendant seeks an adjournment of the June 1, 2022 conference for several reasons. First, to the extent that the Court wishes to address Plaintiff's request for leave to file the proposed Second Amended Complaint, Defendant respectfully submits that the June 1st conference should be rescheduled until the proposed amended pleading has been filed. Moreover, even if Plaintiff files the proposed Second Amended Complaint before June 1st, defense counsel will not be able to draft the response and confer with Defendant before the conference given the truncated schedule due to the timing of Plaintiff's filing. Further, based on the general overview provided by Plaintiff concerning the proposed Second Amended Complaint (see D.E. No. 14), Defendant anticipates submitting an opposition to Plaintiff's request for leave.

While Defendant does not prejudice whether the proposed Second Amended Complaint will adequately state a claim for relief, we do not believe the amended pleading will cure any defects (e.g., statute of limitations, procedural bar, duplicative claims) or allege actual facts to support Plaintiff's bare assertions consistent with her obligations under *Iqbal* and *Twombly*. Based on the facts known to us, for example, we have no reason to believe that she will be able to adequately allege RICO claims when the crux of this action is Plaintiff's complaint that the reason proffered for her termination is false, i.e., that Plaintiff allegedly did not engage in discriminatory conduct.

Accordingly, whether in response to the First Amended Complaint or the Second Amended Complaint, Defendant anticipates filing a Rule 12(b)(6) motion to dismiss. As such, Defendant respectfully requests that the June 1, 2022 conference be scheduled until a date and time until after Defendant's Rule 12(b)(6) motion is fully briefed or, in the alternative, until Defendant has had an opportunity to file its response to Plaintiff's request for leave to file the proposed Second Amended Complaint.

We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/

Eli Z. Freedberg

Gary Moy

Attorneys for Defendant

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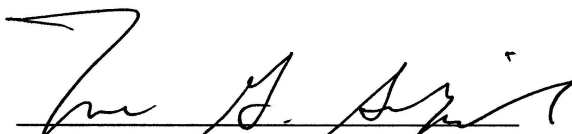
Application GRANTED in part and DENIED in part. The initial pretrial conference scheduled for June 1, 2022, is adjourned and rescheduled to **June 29, 2022, at 4:20 P.M.** At that time, the parties shall dial 888-363-4749 and use the access code 558-3333. The parties shall confer and file the joint letter and proposed civil case management plan and scheduling order as required by the Order dated April 11, 2022, at Docket Number 7, by **June 22, 2022, at 12:00 P.M.**

If Plaintiff files a letter attaching a proposed second amended complaint by June 3, 2022, Defendant shall file a letter, not to exceed four pages, in response to Plaintiff's request for leave by **June 10, 2022.**

The parties are advised that the briefing schedule for any anticipated motion to dismiss will not affect the scheduling of the initial pretrial conference, and no further extensions or adjournments will be granted absent exceptional circumstances.

So Ordered.

Dated: May 25, 2022
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE